



Response To Notice Of Allowability - Item #5
Pat. App. Serial No. 09/676,296
Attorney Ref. No. 32156.0005
Page 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of Boerner

Serial No.: 09/676,296 Filed: September 28, 2000

For: Emotive Index Corresponding To A Message

Examiner: M.J. Sked Group Art Unit: 2655

RESPONSE TO NOTICE OF ALLOWABILITY - ITEM #5

Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450

Sir:

A Notice Of Allowability dated April 26, 2005 was included with the Notice Of Allowance And Fee(s) Due, which was dated May 4, 2005. Item #5 of the Notice Of Allowability noted that a substitute declaration must be submitted. Page 2 - section 6 of the Notice Of Allowability states that the declaration filed January 12, 2001 was not signed by one of the inventors, Peer Boerner.

I hereby Certify that this Correspondence is being deposited this date with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Alicia Falkenbach

Name of person signing the certification

June 3, 2005

Signature

Date

Response To Notice Of Allowability - Item #5
Pat. App. Serial No. 09/676,296
Attorney Ref. No. 32156.0005
Page 2

Enclosed is a copy of the materials mailed on January 9, 2001 and received by the USPTO on January 12, 2001. Two declarations were filed - one signed by inventor Frey and one signed by inventor Boerner. Also enclosed is a copy of the postcard stamped by the USPTO and listing the two declarations. This post card is evidence that both declarations were received by the USPTO on January 12, 2001.

The undersigned is not aware of an obligation to have all inventors sign the same copy of the declaration. It is respectfully requested that the examiner identify that portion of the MPEP, CFR or USC which imposes such an obligation, or withdraw the requirement to submit a substitute declaration.

The Examiner is invited to call the undersigned if any questions remain following review of this response.

Respectfully submitted,

R. Kent Roberts

Attorney for Applicant Registration No. 40,786

Date: June 3, 2005

Hodgson Russ LLP One M&T Plaza, Suite 2000 Buffalo, NY 14203-2391

Enclosures

-copy of Jan. 9, 2001 materials (9 pages)

-copy of stamped post card (1 page)



I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on January 9, 2001

Michelle M. Scordato

Signature

January 9, 2001

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Boerner, et al

Serial No.: 09/676,296

Filed: September 28, 2000

For: Device and Method of Determining Emotive Index

Corresponding to a Message

RESPONSE

Assistant Commissioner for Patents Attention: Box Missing Parts Washington, D.C. 20231

Sir:

Responsive to the Notice To File Missing Parts Of Nonprovisional Application dated November 9, 2000 (copy enclosed), herewith is an executed Oath and Declaration from each of the inventors. Enclosed is payment of the \$65 surcharge. If underpayment or overpayment has been made, please charge to Deposit Account No. 08-2442.

Respectfully submitted,

Hodgson Russ, ANDREWS, WOODS & GOODYEAR LLP

R. Kent Roberts, Reg. No. 40,786

One M&T Plaza, Suite 2000 Buffalo, New York 14203-2391

(716) 848-1510

Date: January 9, 2001

BFLODOCS:486771_1 (@FLF01)



The Patent and Trademark Office date stamp hereon will acknowledge receipt of:

Fee Transmittal (1 page)

Response Letter to the Assistant Commissioner for Patents (1 page) Copy of Notice to File Missing Parts of Nonprovisional Application (1 page) Two (2) Declarations for Utility or Design Patent Application (3 pages each) Check in the Amount of \$65

In Re Application of: Boerner, et al

Serial No. 09/676,296

Filed: September 28, 2000

Re: Device and Method of Determining Emotive Index

Corresponding to a Message

32156.0005 (RKR/ms)

MAE 15N





COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER

FILING/RECEIPT DATE

FIRST NAMED APPLICANT

ATTORNEY DOCKET NUMBER

09/676,296

09/28/2000

Peer Boerner

32156.0005

R Kent Roberts
Hodgson Russ Andrews Woods & Goodyear LLP
Suite 2000
One M&T Plaza
Buffalo, NY 14203-2391



Date Mailed: 11/09/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 65.

A copy of this notice MUST be returned with the reply.

Customer Service/Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

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гише			(37 CFF required	R 1.16(e)) I)	Examiner Name		ne		
As a below named inv	ento	r, I hereby de	clare that	:				<u> </u>	
My residence, post offi	ice ad	ldress, and citi	zenship ar	re as stated below ne	ext to my	v name			
names are listed below;	of th	ne subject matt	er which	is claimed and for w	hich a p	ow) or an amount is s	original, fi sought on the	rst and joint inventor (if plural e invention entitled:	
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	D	evice and Met	hod of De	etermining Emotive	Index C	orrespon	ding to a Mo	essage	
the specification of which (Title of the Invention) is attached hereto OR									
was filed on (N	им/I	DD/YYYY)	09	/28/2000 as U	nited St	ates App	lication Nur	nber or PCT International	
Application Number		09/676,296	and	l was amended on (N				(if applicable).	
I hereby state that I hav	e rev	iewed and und	erstand th			•		ncluding the claims, as amended	
by any amendment spec	ifical	ly referred to	above.			······································		nordering the claims, as amended	
I acknowledge the duty	to dis	sclose information	ion which	is material to paten	tability	as define	ed in 37 CFI	R 1.56.	
America, listed below a	any i nd ha	ve also identif	nai applicated below	ation which designate, by checking the bo	ted at lead	ast one c foreign a	ountry other	on(s) for patent or inventor's than the United States of patent or inventor's on which priority is claimed.	
Prior Foreign Applicat (Numbers)	ion	Count	Foreign Filing					Certified Copy Attached? YES NO	
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								SB/02B attached hereto.	
I hereby claim the benef	it unc	ler 35 U.S.C.	119(e) of	any United States p	rovision	al applic	ation(s) liste	d below.	
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DECLARATION - Utility or Design Patent Application

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America, list application in	m the benefit un ted below and, i in the manner pro CER 1.55 whice	nsofar as the ovided by the	e subject matt e first paragr	ter of each of th aph of 35 U.S.C	e claims of thi C. 112, I ackn	is applicati owledge th	ion is not disclo ne duty to discl	osed in the	prior Unite	ed State:	s or PCT In	ternational ntability as
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As a named of Office connection	inventor, I hereb cted therewith:	y appoint th	e following r	registered practi	tioner(s) to pr	osecute thi	is application a	nd to tran	sact all busi	ness in	the Patent a	nd Trademark
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Registere	d practitioner's	name/registr	ation number	r listed below		1			•	· .	<u> </u>	
	Name	:		Registr Num			N	ame				gistration Number
Ranjana Kadle Martin G. Linihan Kevin D. McCarthy David L. Principe			40,041 24,926 35,278 39,336		R. Kent Roberts Michael F. Scalise Daniel C. Oliverio Edwin T. Bean, Jr.					40,786 34,920 33,435 16,639		
□Additional	registered pract	itioner(s) na	med on suppl	lemental Registe	ered Practition	er Inform	ation sheet PT	O/SB/02C	attached he	ereto		
Direct all o	corresponden	ce to:		er Number Code Label			OR		Corres	ponde	nce addre	ess below
Name	R. Kent Ro	berts								ø		
Address	Hodgson, R	Russ, Andı	rews, Woo	ods & Goody	ear LLP				· 			
Address	One M&T	Plaza, Sui	te 2000				···					
City	Buffalo				State	Ne	ew York	7	ZIP	1420	03-2391	· · · · · · · · · · · · · · · · · · ·
Country	United State	es	Telepho	ne	(716) 856	-4000		I	ax	(716	5) 849-03	49
further that th	are that all stater ese statements v 01 and that such	vere made w	ith the know	ledge that willfi	ıl false statem	ents and th	he like so made	e are puni:	shable by fi	elief an ne or in	e believed t nprisonmen	o be true; and t, or both, unde
Name of S	ole or First	Inventor:			□ A peti	tion has	been filed i	for this u	ınsigned	invent	or	
	Given Nan	ne (first a	nd middle	[if any])		Family Name or Surname						
		Pee	er			Воеглег						
Inventor's Signature										I.	Date	
Residence:	City	Valrico		State	Florida	T	Country	US		Citiz	enship	
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City		Valrico		State	Florida		ZIP	33594		Co	untry	US
■ Addition	al inventors a	are being	named on	the 1 supples	mental Add	itional I	nventor(s) s	heet(s)	PTO/SB/	02A a	ttached he	ereto.

DECLARATION

ADDITIONAL INVENTOR(S) Supplemental Sheet Page 3 of 3

Name of Additional Jo	oint Inventor, if any:			□ A pe	tition has be	en filed for this u	insigned invento	or		
Given Name (first and middle [if any])					Family Name or Surname					
James					Frey					
Inventor's Signature	James 7	3. Tree	· · · · ·				Date	29 Set 200		
Residence: City	Fairport	State	New Y	ork	Country	US	Citizenship	29 Sept 200 U.S.		
Post Office Address	53 Erie Drive									
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City	Fairport	State	State New York ZIP 14450				Country	US		
Name of Additional Jo	int Inventor, if any:			□ A per	ition has bee	en filed for this u	nsigned invento)r		
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Inventor's Signature							Date	·		
Residence: City		State			Country		Citizenship			
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Approved for use through 09/30/00, OMB 0651-0032 Please type a plus sign inside this box SB/01 (12/97) Attorney Docket Number 32156.0005 DECLARATION FOR UTILITY OR **DESIGN** Boerner, et al First Named Inventor PATENT APPLICATION COMPLETE IF KNOWN (37 CFR 1.63) Application Number Declaration September 28, 2000 Declaration Filing Date Submitted after Initial OR Submitted Filing (surcharge Group Art Unit with Initial (37 CFR 1.16(e)) Filing Examiner Name required) As a below named inventor, I hereby declare that: My residence, post office address, and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: Device and Method of Determining Emotive Index Corresponding to a Message (Title of the Invention) the specification of which is attached hereto OR as United States Application Number or PCT International was filed on (MM/DD/YYYY) 09/28/2000 (if applicable). and was amended on (MM/DD/YYYY) Application Number I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56. I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed. Certified Copy Attached? **Priority** Foreign Filing Date Prior Foreign Application NO YES Not Claimed (MM/DD/YYYY) Country (Numbers) 0 Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto. I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below. Filing Date (MM/DD/YYYY) Application Number(s) Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto. [Page 1 of 3]

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As a named in Office connect	ventor, I hereby	appoint the following	registered practiti	oner(s) to pro	secute this a	pplication and t	o transact all busin	ess in the Patent and	l Trademark		
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Name	R. Kent Rob	епѕ	<u> </u>								
Address	Hodgson, Ri	uss, Andrews, Wo	oods & Goody	ear LLP							
Address	One M&T P	laza, Suite 2000		,							
City	Buffalo			State	Ne	w York	ZIP	14203-2391	·		
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Name of S	ole or First I	nventor:		☐ A pe	tition has	been filed fo	r this unsigned	inventor			
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		Peer	11/	<u>;</u>	<u> </u>		Boern	ner	1		
Inventor's Signature	Inventor's Signature							Date	01 08 0		
Residence	: City	Yalrico !!	State	Florid	а	Country	us	Citizenship	U.S		
Post Offic	e Address	2313 Timbergro	ve Drive								
Post Offic	e Address				<u> </u>				1		
City		Valrico	State	e Florid	а	ZIP	33594	Country	us		
■ Addition	nal inventors	are being named	on the 1 suppl	emental A	dditional l	nventor(s) sl	heet(s) PTO/S	B/02A attached	hereto.		

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PTO/SB/02A (3/97)

Approved for use through 09/30/00, OMB 0651-0032

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DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet
Page 3 of 3

Name of Additional Jo	int Inventor, if any:			A petiti	ion has been	filed for this ur	signed inventor	
	ne (first and middle	••		·		Family Name o	r Surname	
	James					Frey		
Inventor's Signature							Date	
Residence: City	Fairport	State	State New York Country US Citizenship					
Post Office Address	53 Erie Drive							
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City	Fairport	State	New Yo		ZIP	14450	Country	US
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